IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 22/2004

Yashwant alias Samir Bhagat,
Presently undergoing sentence
at Central Jail, Aguada, Bardez-Goa. ..... Appellant.

V/s.

The State. ..... Respondent.

Mr. Arun Bras de Sa, Advocate for the appellant.

Mr. S.N. Sardessai, Public Prosecutor for the State/Respondent.

CORAM : A.P. LAVANDE &
N.A. BRITTO, JJ.

Date of reserving the Judgment :
8th February, 2005.

Date of pronouncing the Judgment :
16th February, 2005.

J U D G M E N T : (Per LAVANDE, J.)

By this appeal, the appellant takes exception to Judgment and Order dated 21.11.2003, passed by the learned Sessions Judge, North Goa, Panaji in Sessions Case No.1/2003, convicting the appellant under Sections 302 and 454 of the Indian Penal Code and sentencing him to suffer Imprisonment for Life and to pay a fine of Rs.3,000/- , in default to suffer Rigorous Imprisonment for three months for the

Offence under Section 302 of I.P.C. and further sentencing him to suffer Rigorous Imprisonment for three years and to pay a fine of Rs.1,000/- , in default, to suffer Rigorous Imprisonment for one month for the offence under Section 454 of I.P.C.

2. The prosecution case, in brief, is that on 18.9.2002 between 13.00 to 13.25 hours, at Panshiwada, Pernem, the appellant effected entry into the room of Shri Chandrakant Yashwant Bhagat by cutting window grills and assaulted his wife Kavita Chandrakant Bhagat with a knife on her abdomen with an intention to commit her murder. Thereafter, the said Kavita was taken to Pernem Health Centre and thereafter to the Goa Medical College, where she expired on 24.9.2002 at 14.40 hours. F.I.R. was lodged by the husband of the deceased Kavita on 18.9.2002 at about 9.30 p.m. at the Pernem Police Station.

3. The investigation was taken up and the charge-sheet was filed against the appellant under Sections 302 and 454 of I.P.C. The case was committed to the Sessions Court, Panaji. In Sessions Case No.1/2003, the prosecution examined 14 witnesses. The accused did not lead any defence evidence. The defence set up by the accused is that of bare denial. After considering the evidence led by the prosecution, the trial Court held the accused guilty for having committed the offences under Sections 302 and 454 of I.P.C. and sentenced him to undergo different

periods of imprisonment, as stated above.

4. The evidence led by the prosecution has been rightly categorised into seven categories by the learned trial Court and they are as follows :

(i) Eye witnesses.

(ii) Witnesses who arrived at the spot of incident immediately after the occurrence of the incident.

(iii) Recovery of the weapon of assault at the instance of the accused.

(iv) Purchase of the weapon of assault, namely the knife by the accused.

(v) Medical evidence.

(vi) Other evidence

(vii) Motive for committing the crime.

5. The trial Court has relied upon the evidence of the eye witnesses and has held that the eye witnesses are reliable. The trial Court has also held that the purchase of knife by the accused and as its recovery at the instance of the accused, have been proved by the prosecution. The trial Court has also held that the prosecution has proved the motive for commission of the crime.

6. Mr. D'Sa, the learned Counsel appearing for the appellant has submitted that PW.6 Shradha Bhagat and PW.9 Sachin Bhat who claim to be the eye witnesses cannot be accepted as eye witnesses. He submitted that the names of these witnesses do not figure in the F.I.R as well as in the substantive evidence of PW.1 Chandrakant Bhagat and therefore the testimony of these witnesses cannot be believed. He has further submitted that the prosecution has not brought on record any cogent evidence to prove the motive for the commission of the crime. He has further submitted that the recovery of the weapon at the instance of the accused is vitiated inasmuch as the evidence clearly discloses that the Investigating Officer knew in advance about the weapon which was alleged to have been used in the commission of the crime. The learned Counsel further submitted that having regard to the testimony of PW.6 Shradha and PW.9 Sachin, in so far as the time of their arrival at the scene of offence is concerned, it is clear that they have not seen the incident of stabbing by the accused, as deposed by them. He has further submitted that adverse inference should be drawn against the prosecution for non-examination of Shri Raya Kashalkar, who is an important witness in the case.

7. Per contra, Mr. Sardessai, the learned Public Prosecutor, has submitted that there is no reason to doubt the evidence of eye witnesses and the difference in the time mentioned by the said witnesses can be

termed as a minor variation, which does not affect the prosecution case. He further submitted that the medical evidence clearly proves that the version given by the eye witnesses is trustworthy. He further submitted that the recovery of weapon at the instance of the accused and the fact that the accused had purchased the said weapon, has been duly proved by the prosecution. According to the learned Public Prosecutor, the prosecution has proved by cogent evidence the motive for commission of the crime by the accused. He has relied upon several authorities which are in respect of the settled propositions of law and as such we do not consider it necessary to mention them.

8. We have considered the submissions made by the learned Counsel for the appellant and the learned Public Prosecutor. Since the prosecution claims that PW.6 Shraddha and PW.9 Sachin were the eye witnesses, their evidence has to be scrutinised first to find out the complicity of the accused in commission of the crime. No doubt, they being the children of the deceased, their evidence has to be scrutinised in order to find out whether their evidence inspires confidence. PW.9 Sachin who is the son of the deceased has stated in his evidence that on 18.9.2002 he returned home from School at about 12.40 hours and that the door of the house was closed and the key of the door was with his mother. He has further deposed that at about 1.20 p.m. his mother and younger sister Shradha PW.6 returned home and his mother opened

the door and after entering the house, when she was keeping the school bag of his sister on the floor of the house, the accused stabbed his mother with knife on the right side of her abdomen near the chest and thereafter the accused ran away from the house along with the knife. He has further stated that he tried to catchhold of the accused, but the accused pushed him and ran away. It is in his evidence that thereafter he and his aunty Deepali PW.13 brought his mother in Varandah and his mother was given water and thereafter their neighbour Raya Kashalkar came running to the house and thereafter, he informed his father at the request of his aunty. He has further stated that thereafter, she was taken in a Maruti Van to Parshem Hospital and thereafter he learn that his mother was shifted to Goa Medical College, where she died on 24.9.2002. He has also deposed that the knife with which his mother was stabbed, was tied to a bamboo stick and the length of the knife was about 12 inches and length of the bamboo stick was about 1 metre or so. The testimony of this witness has not been shaken in the cross examination, except that in the cross examination he has been confronted with the statement mad by him before the police in which the witness had stated that the school was over at 12.40 hours. In so far as the testimony of P'W.6 Shradha, the daughter of the deceased is concerned, the Sessions Judge, after holding the competency test, was satisfied that the witness was competent enough to depose. In her examination in chief, PW.6 Shradha has substantially corroborated the

testimony of P'W.9 Sachin. In cross examination, she has stated that her school starts at 8 a.m. and gets over at 1.15 p.m. She has further stated that her mother was not accompanying her while she was going to the School and her mother was not going to the school to take her back. She has further stated that both of them were meeting while coming home as her mother was going to the hotel run by her father. In cross examination it has been suggested to her that there used to be quarrels between the deceased and the accused as the accused was demanding his share in the property. From the perusal of the cross examination of the said witness, it is evident that her testimony has also not been shaken in the cross examination.

9. Mr. D'Sa, the learned counsel appearing for the appellant submitted that having regard to the statement made by PW.6 Shradha that her school gets over at 1.15 p.m., the only inference is that neither Shradha nor Sachin was present at the time of the alleged stabbing of the deceased. We are unable to accept the submission made by the learned Counsel appearing for the appellant for various reasons. Firstly, the variation in time is not such so as to come to the conclusion that these witnesses were not present at the time of the commission of the offences. A person who deposes in a Court almost after one year of the incident, may not be in a position to give the exact time and in the present case, the difference in time is not such so as to come to the

conclusion that at the time of the incident, both these witnesses were not present in the house. Moreover, the charge framed against the accused reveal that the accused was charged with the offence of murder, committed on 24.9.2003, between 13 hours to 13.25 hours. It appears that the date 24 and the year 2003 have been wrongly mentioned since the chalan filed by the police clearly discloses that the alleged offence was committed by the accused on 18.9.2002. We are therefore, of the opinion that no prejudice has been caused to the accused by mentioning wrong date and the year and, therefore, on this count the Judgment of the trial Court is not liable to be set aside. We are also unable to accept the submission of the learned Counsel appearing for the appellant that since the names of these witnesses do not figure either in FIR or in the substantive evidence of PW.1 Chandrakant Bhagat, the version of these witnesses that they were eye witnesses to the incident should not be accepted. Since the trial Court which had the benefit of watching the demeanour of these witnesses, has held that both the witnesses inspire confidence, we do not find any reason to take a contrary view. That being the position, we agree with the trial Court that the testimony of these witnesses inspires confidence and they were the natural eye witnesses to the incident.

10. The testimony of the two eye witnesses also finds corroboration from the medical evidence. The prosecution has examined

PW.10 Dr. Roshan Nazareth, who was at the relevant time working as Medical Officer at Pernem Health Centre and who examined the deceased on 18.9.2002 at 2.10 p.m. and found the following injury on her body: Incised wound (5 x 3 cms) on the right lower chest on lateral side caused by sharp edge weapon within six hours of duration. The witness has produced certificate (Exhibit-30) and has stated that the injury could be caused by knife. PW.11 Dr. Adarsh Kumar who conducted post-mortem examination on the dead body of the deceased on 25.9.2002 has deposed that on examination of the deceased he found the following external injuries:

1. Surgically stitched incised wound of 16 cms. having 12 stitches placed over right side of chest in mid axillary line 106 cms. from right heel, running obliquely downwards and culminating at front of chest 14 cms. below right nipple in mid clavicular line in 9th intercostal space. On removal of the stitches incised penetrating wound of 5 x 1 cms. with surgical extension of 7 cms. anteriorly and 4 cms. posteriorly is present. Margins of wound are clean cut. The penetrating incised wound has made cut on skin. Subcutaneous tissue, intercostal muscles in 9th I.C.S. over anterior aspect in area of 5 x 1 cms. which are stitched surgically with stitches in-situ. On dissection it is reaching into chest cavity making incision into diaphragm right side for 6 cms. which is stitched surgically with stitches in-situ. Wound has further made cut on anterior surface of

liver in an area of 6 x 2 cms. and then entered obliquely into parenchyma of liver upto a depth of 11 cms. to reach into left lobe. There is extravasation of blood all around back of wound. Total depth of wound from skin to left lobe of liver is 15 cms. Direction of wound is from right side chest to medially backwards and downwards.

2. Surgical stitched wound having 7 stitches measuring 16 x 2 cms. placed vertically over right side abdomen 5 cms. from mid line, starting 5 cms. below epigastric region.

3. Surgical incised wound of 1.5 x 1 cms. present in posterior axillary line 4 cms. below starting point of injury no.1.

4. Surgical incised wound of 1.5 x 1 cm. present in mid axillary line 8 cms. below injury no.1 in the mid line. T

5. Bed sore of 4 x 3 cms. present over back of right gluteal region.

6. Bruise, green in colour of 2 x 1 cms. present over middle of left upper arm outer aspect.

7. Multiple injection prick marks with swelling of adjoining areas present over dorsum of right hand, right fore arm, left hand and both inguinal regions.

According to PW.11 Dr. Adarsh Kumar, the death was due to damage for liver and the diaphragm resulting into haemoragic shock consequent to impact with sharp cutting pointed and penetrating weapon which is fatal in ordinary course of events. He has also deposed

that injury No.1 could be caused by knife and weapon described by him. Upon examination of the weapon, he has prepared the weapon examination report which is on record at Exhibit 34-colly. The witness has also produced the post mortem report which is at Exhibit-33. The medical evidence on record, therefore, clearly corroborates the version given by the two eye witnesses. This is an additional ground for us to hold that the testimony of two eye witnesses inspires confidence and therefore can be relied upon.

11. In so far as the recovery of the weapon is concerned, having regard to the testimony of panch witness PW.8 Vishnu Salgaonkar and the testimony of Investigating Officer PW.14 Pandharinath Mapari, we are satisfied that the accused had made a disclosure statement that he would show the place where he had hidden the knife and consequent to the disclosure statement made, the knife was recovered and attached. The testimony of PW.8, Vishnu Salgaonkar and that of PW.14 Mapari, in so far as the recovery of the knife at the instance of the accused is concerned, has not been shaken in the cross examination. The recovery of knife at the instance of the accused is an additional circumstance which clearly proves the complicity of the accused in the commission of the crime. We are unable to accept the submission made by Shri D'Sa that the police already knew, in advance, about the knife and on that count the recovery at the instance of the accused is

vitiated. The prosecution has also examined the witnesses who arrived at the spot of the incident immediately after the occurrence of the incident. They are PW.1 Chandrakant Bhagat and PW.13 Deepali Bhagat. PW.1 Chandrakant Bhagat has deposed that after he was informed about the incident by Raya Kashalkar, he rushed to his residence and at that time his wife told him that the accused had stabbed her when she entered the house by opening the door. In the cross examination, the accused has suggested that this statement made by the said witness is false. But we have no reason to disbelieve the oral dying declaration which was made by the deceased to this witness. The oral dying declaration made by the deceased is an additional piece of evidence which supports the prosecution case. PW.13 Deepali Bhagat who is stepmother of the accused has fully supported the prosecution. She, inter alia, has deposed that she had seen the accused in the varandah of the house and thereafter, the accused ran away towards the left side of the house along with the knife attached to a bamboo stick. Her testimony has not been shaken in the cross examination and whatever contradictions which have been brought on record in cross examination cannot be said to be such, so as to completely disbelive the version given by the said witness. No doubt, she is the stepmother of the accused, but upon close scrutiny of her evidence, we are satisfied that her evidence inspires confidence and there is absolutely no reason to disbelieve her testimony. We are also unable to accept the submission of

Mr. D'Sa that on account of non-examination of Shri Raya Kashalkar, adverse inference has to be drawn against the prosecution.

12. In so far as the motive is concerned, it is submitted by the learned Counsel that the prosecution has not proved the motive for the commission of the crime. It is pertinent to note that the accused himself has suggested in the cross examination of PW.6 Shradha that there used to be quarrels between the deceased and the accused. It is well settled that in a case where there are eye witnesses, the motive is not of much relevance. It is also well settled that it is difficult for the prosecution to prove the exact motive since the same is locked in the mind of the accused. Having regard to the evidence brought on record, it is clearly established that th relations between the accused and the deceased were strained. That being the position, we are satisfied that the finding of the trial Court that the prosecution has proved the motive for the commission of the crime, cannot be faulted.

13. Having regard to the totality of the evidence brought on record, we are satisfied that the prosecution has been successful in bring home the guilt of the accused in so far as the commission of the offences under Sections 302 and 454 of IPC are concerned. We are satisfied that the finding given by the learned trial Court are based on evidence on record and the conviction of the appellant for having committed offences

under Sections 302 and 454 I.P.C. and the sentences imposed on the appellant by the trial Court do not deserve any interference.

14. In the result, therefore, we do not find any merit in this appeal. Consequently, the appeal stands dismissed.

A.P. LAVANDE, J.

N.A. BRITTO, J.

ssm.